

subsequent similar services under the limitation of liability provisions based on the denial of the services at issue;

(2) No other individual or entity with a financial interest in the case wishes to pursue an appeal under § 405.1102;

(3) No other party to the ALJ hearing filed a valid and timely review request under § 405.1102 and § 405.1112.

§ 405.1116 Effect of dismissal of request for MAC review or request for hearing.

The dismissal of a request for MAC review or denial of a request for review of a dismissal issued by an ALJ is binding and not subject to further review unless reopened and vacated by the MAC. The MAC's dismissal of a request for hearing is also binding and not subject to judicial review.

§ 405.1118 Obtaining evidence from the MAC.

A party may request and receive a copy of all or part of the record of the ALJ hearing, including the exhibits list, documentary evidence, and a copy of the tape of the oral proceedings. However, the party may be asked to pay the costs of providing these items. If a party requests evidence from the MAC and an opportunity to comment on that evidence, the time beginning with the MAC's receipt of the request for evidence through the expiration of the time granted for the party's response will not be counted toward the 90-day adjudication deadline.

§ 405.1120 Filing briefs with the MAC.

Upon request, the MAC will give the party requesting review, as well as all other parties, a reasonable opportunity to file briefs or other written statements about the facts and law relevant to the case. Any party who submits a brief or statement must send a copy to all of the other parties. Unless the party requesting review files the brief or other statement with the request for review, the time beginning with the date of receipt of the request to submit the brief and ending with the date the brief is received by the MAC will not be counted toward the adjudication timeframe set forth in § 405.1100. The MAC may also request, but not require, CMS or its contractor to file a brief or posi-

tion paper if the MAC determines that it is necessary to resolve the issues in the case. The MAC will not draw any adverse inference if CMS or a contractor either participates, or decides not to participate in MAC review.

§ 405.1122 What evidence may be submitted to the MAC.

(a) *Appeal before the MAC on request for review of ALJ's decision.* (1) If the MAC is reviewing an ALJ's decision, the MAC limits its review of the evidence to the evidence contained in the record of the proceedings before the ALJ. However, if the hearing decision decides a new issue that the parties were not afforded an opportunity to address at the ALJ level, the MAC considers any evidence related to that issue that is submitted with the request for review.

(2) If the MAC determines that additional evidence is needed to resolve the issues in the case and the hearing record indicates that the previous decision-makers have not attempted to obtain the evidence, the MAC may remand the case to an ALJ to obtain the evidence and issue a new decision.

(b) *Appeal before MAC as a result of appellant's request for escalation.* (1) If the MAC is reviewing a case that is escalated from the ALJ level to the MAC, the MAC will decide the case based on the record constructed at the QIC and any additional evidence, including oral testimony, entered in the record by the ALJ before the case was escalated.

(2) If the MAC receives additional evidence with the request for escalation that is material to the question to be decided, or determines that additional evidence is needed to resolve the issues in the case, and the record provided to the MAC indicates that the previous decision-makers did not attempt to obtain the evidence before escalation, the MAC may remand the case to an ALJ to consider or obtain the evidence and issue a new decision.

(c) *Evidence related to issues previously considered by the QIC.* (1) If new evidence related to issues previously considered by the QIC is submitted to the MAC by a provider, supplier, or a beneficiary represented by a provider or supplier, the MAC must determine if

the provider, supplier, or the beneficiary represented by a provider or supplier had good cause for submitting it for the first time at the MAC level.

(2) If the MAC determines that good cause does not exist, the MAC must exclude the evidence from the proceeding, may not consider it in reaching a decision, and may not remand the issue to an ALJ.

(3) The MAC must notify all parties if it excludes the evidence. The MAC may remand to an ALJ if—

(i) The ALJ did not consider the new evidence submitted by the provider, supplier, or beneficiary represented by a provider or supplier because good cause did not exist; and

(ii) The MAC finds that good cause existed under § 405.1028 and the ALJ should have reviewed the evidence.

(iii) The new evidence is submitted by a party that is not a provider, supplier, or a beneficiary represented by a provider or supplier.

(d) *Subpoenas.* (1) When it is reasonably necessary for the full presentation of a case, the MAC may, on its own initiative or at the request of a party, issue subpoenas requiring a party to make books, records, correspondence, papers, or other documents that are material to an issue at the hearing available for inspection and copying.

(2) A party's request for a subpoena must—

(i) Give a sufficient description of the documents to be produced;

(ii) State the important facts that the documents are expected to prove; and

(iii) Indicate why these facts could not be proven without issuing a subpoena.

(3) A party to the MAC review on escalation that wishes to subpoena documents must file a written request that complies with the requirements set out in paragraph (d)(2) of this section within 10 calendar days of the request for escalation.

(4) A subpoena will issue only where a party—

(i) Has sought discovery;

(ii) Has filed a motion to compel;

(iii) Has had that motion granted; and

(iv) Nevertheless, has still not received the requested discovery.

(e) Reviewability of subpoena rulings—

(1) *General rule.* A MAC ruling on a subpoena request is not subject to immediate review by the Secretary.

(2) *Exception.* (i) To the extent a subpoena compels disclosure of a matter for which an objection based on privilege, or other protection from disclosure such as case preparation, confidentiality, or undue burden, was made before the MAC, the Secretary may review immediately that subpoena or portion of the subpoena.

(ii) Upon notice to the MAC that a party or non-party, as applicable, intends to seek Secretary review of the subpoena, the MAC must stay all proceedings affected by the subpoena.

(iii) The MAC determines the length of the stay under the circumstances of a given case, but in no event is less than 15 days after the day on which the MAC received notice of the party or non-party's intent to seek Secretary review.

(iv) If the Secretary grants a request for review, the subpoena or portion of the subpoena, as applicable, is stayed until the Secretary issues a written decision that affirms, reverses, modifies, or remands the MAC's action for the subpoena.

(v) If the Secretary does not grant review or take own motion review within the time allotted for the stay, the stay is lifted and the MAC's action stands.

(f) *Enforcement.* (1) If the MAC determines, whether on its own motion or at the request of a party, that a party or non-party subject to a subpoena issued under this section has refused to comply with the subpoena, the MAC may request the Secretary to seek enforcement of the subpoena in accordance with section 205(c) of the Act, 42 U.S.C. 405(c).

(2) Any enforcement request by the MAC must consist of a written notice to the Secretary describing in detail the MAC's findings of noncompliance and its specific request for enforcement, and providing a copy of the subpoena and evidence of its receipt by certified mail by the party or nonparty subject to the subpoena.

(3) The MAC must promptly mail a copy of the notice and related documents to the party or non-party subject to the subpoena, and to any other party and affected non-party to the appeal.

(4) If the Secretary does not grant review or take own motion review within the time allotted for the stay, the stay is lifted and the subpoena stands.

§ 405.1124 Oral argument.

A party may request to appear before the MAC to present oral argument.

(a) The MAC grants a request for oral argument if it decides that the case raises an important question of law, policy, or fact that cannot be readily decided based on written submissions alone.

(b) The MAC may decide on its own that oral argument is necessary to decide the issues in the case. If the MAC decides to hear oral argument, it tells the parties of the time and place of the oral argument at least 10 days before the scheduled date.

(c) In case of a previously unrepresented beneficiary, a newly hired representative may request an extension of time for preparation of the oral argument and the MAC must consider whether the extension is reasonable.

(d) The MAC may also request, but not require, CMS or its contractor to appear before it if the MAC determines that it may be helpful in resolving the issues in the case.

(e) The MAC will not draw any inference if CMS or a contractor decides not to participate in the oral argument.

§ 405.1126 Case remanded by the MAC.

(a) *When the MAC may remand a case.* Except as specified in § 405.1122(c), the MAC may remand a case in which additional evidence is needed or additional action by the ALJ is required. The MAC will designate in its remand order whether the ALJ will issue a final decision or a recommended decision on remand.

(b) *Action by ALJ on remand.* The ALJ will take any action that is ordered by the MAC and may take any additional action that is not inconsistent with the MAC's remand order.

(c) *Notice when case is returned with a recommended decision.* When the ALJ

sends a case to the MAC with a recommended decision, a notice is mailed to the parties at their last known address. The notice tells them that the case was sent to the MAC, explains the rules for filing briefs or other written statements with the MAC, and includes a copy of the recommended decision.

(d) *Filing briefs with the MAC when ALJ issues recommended decision.* (1) Any party to the recommended decision may file with the MAC briefs or other written statements about the facts and law relevant to the case within 20 days of the date on the recommended decision. Any party may ask the MAC for additional time to file briefs or statements. The MAC will extend this period, as appropriate, if the party shows that it has good cause for requesting the extension.

(2) All other rules for filing briefs with and obtaining evidence from the MAC follow the procedures explained in this subpart.

(e) *Procedures before the MAC.* (1) The MAC, after receiving a recommended decision, will conduct proceedings and issue its decision or dismissal according to the procedures explained in this subpart.

(2) If the MAC determines that more evidence is required, it may again remand the case to an ALJ for further inquiry into the issues, rehearing, receipt of evidence, and another decision or recommended decision. However, if the MAC decides that it can get the additional evidence more quickly, it will take appropriate action.

§ 405.1128 Action of the MAC.

(a) After it has reviewed all the evidence in the administrative record and any additional evidence received, subject to the limitations on MAC consideration of additional evidence in § 405.1122, the MAC will make a decision or remand the case to an ALJ.

(b) The MAC may adopt, modify, or reverse the ALJ hearing decision or recommended decision.

(c) The MAC mails a copy of its decision to all the parties at their last known addresses. For overpayment cases involving multiple beneficiaries where there is no beneficiary liability the MAC may choose to send written notice only to the appellant. In the